

Minutes of the January 6th, 2006 meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Jean Ginn Marvin; Hon. Michael T. Bigos; Hon. Vinton E. Cassidy; Hon. Andrew Ketterer. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

At 9:03 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of the November 9<sup>th</sup>, 2005 meeting

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to ratify the minutes of the November 9<sup>th</sup> meeting.

Agenda Item #2 – Discussion of Proposed Meeting Dates

Mr. Ketterer said that he thought he could attend the March meeting on the 9<sup>th</sup> or the 10<sup>th</sup>. Mr. Cassidy said that he was not sure about being able to attend the February meeting.

Agenda Item #3 – Request for Waiver of Penalty/Monthly Lobbyist Report

The director explained that Michael Belliveau was a registered lobbyist and had filed a monthly lobbyist report, due November 15, 2005, one day late. The director said that Mr. Belliveau had submitted a letter stating that Mr. Belliveau thought that he had filed the report on time. The director recommended assessing the full statutory penalty of \$100. Mr. Ketterer moved, Mr. Bigos seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and to assess the full statutory penalty of \$100.

Agenda Item #4 – Request for Waiver of Penalty/PAC Campaign Finance Report

The director explained that the Cheaper, Safer Power PAC was required to file a campaign finance report on October 11, 2005 and had filed the report on November 16, 2005. The director said that the PAC had no financial activity for a long time, and that the staff had recommended to William Linnell, the PAC treasurer, that the PAC be terminated. The director also said that the PAC consistently filed its reports late, that it had been penalized before, and now the staff was recommending a penalty of \$75 because the report was filed a month late and that the PAC had a history of late filing. The director also said that Mr. Linnell had sent in a letter requesting a waiver of the penalty because Mr. Linnell had been in Orlando and Dallas helping victims of Hurricane Katrina.

Mr. Linnell took the floor and said that he had tried to contact Martha Currier-Demeritt via e-mail in September about the situation, but the e-mail was not delivered. He thought that once he had arrived in Louisiana he could send file the report electronically via one of the FEMA computers, but found out that the FEMA computers would not allow him to gain access to his Roadrunner account. Mr. Linnell said that he sent repeated e-mails to ask for help but that they were returned, and that he had difficulty finding a computer that he would be able to use to file the report. Mr. Linnell said that he had spoken to Ms. Currier-Demeritt, and that she had said that an exception for the report could not be made. He said he was coming before the Commission to explain the situation and to request a waiver of the penalty.

Mr. Ketterer asked Mr. Linnell that if he had made filing the report a higher priority, would Mr. Linnell have filed the report on time. Mr. Linnell replied that if he had had a personal laptop he would have done the report, but that once he went down to Louisiana, he just could not get it in on time. Mr. Ketterer commented that had Mr. Linnell made filing the report a higher priority, it would have been filed on time.

Mr. Bigos moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and to assess a late filing penalty of \$75.

Agenda Item #5 – Commission Determination on Recommended Penalties and Repayment of Public Funds/Julia St. James, Sarah Trundy, Dan Rogers, and Jessica Larlee

The director explained that after the last hearing on November 9, 2005, the Commission staff sent out letters to the four individuals who were the subjects of the investigations strongly encouraging them to provide an additional documents, items, or other proof that would suggest that public funds were used for actual campaign purposes. He said that the Commission received an e-mail on November 26, 2005 from Jessica Larlee, in which she stated that she was unwilling to participate in the investigation anymore. The Commission staff issued a draft audit report, including the recommended penalties, on December 2, 2005. The director said that both Jessica Larlee and Julia St. James sent responses to the recommended penalties before the December 16, 2005 meeting. On December 15, 2005, Dan Rogers contacted the Commission and requested that the Commission reschedule the December 16, 2005 hearing. The Commission decided to reschedule the meeting to January 6, 2006, and all four individuals were notified by regular mail as to the new date of the meeting. The director's recommendation was that, although none of the four individuals were present at the meeting, the Commission should move forward on the recommended penalties because each individual had been given ample time to respond and to be present at the meeting.

Mr. Ketterer asked if Sarah Trundy has received any correspondence. The director replied that she had not received an e-mail but that letters had been sent to her, and that she had been notified of the meeting. Mr. Ketterer asked for clarification on Mr. Rogers and his request for rescheduling the December 16, 2005 meeting. The director replied that Mr. Rogers had asked for the meeting to be rescheduled because Mr. Rogers had been in Florida, a snow storm was preventing him from obtaining a flight back to Maine in time for the meeting, and that he wanted to be present when the Commission considered the penalties.

After a discussion with Phyllis Gardiner, the Commission decided to continue the proceedings based off of a checklist provided by the Commission staff dealing with each issue surrounding the investigation. Ms. Gardiner said that once the Commission voted on the penalties, the

Commission staff would submit a written determination containing everything the Commission had decided with regards to the investigation.

Note: The minutes will reflect the various sections and topics voted on as noted in the checklist and the actual motion proposed and voted on.

### *St. James Campaign*

#### **I – Use of MCEA Funds for Purposes Unrelated to the Campaign**

##### 1-A – Itemized expenditures for non-campaign purposes

With regards to the St. James campaign, the director explained that the Commission staff believed that there were 3 types of expenditures which were not used for campaign related purposes. The first were expenditures for herbs, a manager's chair, a desk lamp, and dresses which added up to \$318.90. The director noted that the campaign repaid the MCEA fund for these items, which he thought demonstrated an acknowledgement that they were not campaign related. The director also noted that Ms. St. James told the staff that Mr. Rogers and Ms. Larlee told her that it was acceptable to use public funds to buy nice clothes to wear for the campaign, even though the MCEA expenditure guidelines specifically say such expenditures are not acceptable.

Mr. Cassidy asked how the Commission staff calculated the total amount of money spent by the St. James campaign that was not campaign related. The director explained that the Commission staff looked over the reports and information provided to them by Ms. St. James, Ms. Larlee, and Mr. Rogers, as well as any expenditures not explained, and came up with a total of \$11,088.15. The director pointed out that Ms. St. James, in her response to the draft audit report, claimed that Mr. Rogers should be made to pay for the portion of the recommended repayment of MCEA funds because the funds were given to him in good faith and were not used properly. The director said that the Commission staff was recommending that the Commission require Ms. St. James to pay back that amount to the MCEA fund, as well as a civil penalty of \$1,000 for the

misuse of public funds. The director said that while the proposed \$1,000 penalty was less than the \$10,000 maximum, the Commission staff felt that the penalty, in addition to repaying the \$11,088.15, was sufficient. Ms. Ginn Marvin asked if the Commission could ask Ms. St. James to repay the \$11,088.15 and have Mr. Rogers repay the \$5,000 that was given to him by Ms. St. James. The director replied that there did not seem to be any statutory basis to require Mr. Rogers to repay the funds and that the law only allowed the Commission to look to the candidate for the repayment of public funds. Ms. Ginn Marvin said that perhaps this was an area of the law that should be rewritten so that people connected to a campaign could not take advantage of public funds. Mr. Ketterer said that he thought that Ms. St. James did not spend the \$318.90 for campaign purposes, and that Ms. St. James' e-mail response indicated to him that she knew that money was not used for the campaign.

Mr. Bigos moved, Mr. Ketterer seconded, and the Commission voted unanimously (4-0) to require that Julia St. James repay \$318.90 of public funds that was not used for campaign related purposes, which was a violation of 21-A M.R.S.A. §1125(6).

1-B – Cash expenditures for which there are no receipts, invoices or other documentation

The director explained that the St. James campaign used \$8,097.62 in cash for various expenditures, and that after reviewing various receipts, reports and invoices, the Commission staff was recommending that \$5,769.25 of the cash was not used for campaign related purposes, and that Ms. St. James be required to repay that entire amount. The director said that of the \$8,097.62 in cash, Ms. St. James said that she spent close to \$1,700 on campaign related travel and that she would never have spent it on personal travel. However, Ms. St. James did not keep the required records detailing her travel expenses for her campaign. The director also said that there were 2 separate withdrawals of cash - one for \$750 and one for \$4,500 – which Ms. St. James said were used to pay campaign workers during the last month of the campaign. She said that she spent it in \$50 allotments for campaign workers to do various campaign activities including putting mailing labels on roughly 10,000 pieces of literature, as well as paying for pizza and refreshments. The director said that Ms. St. James, had not, as required under the law, been able to identify exactly who it was that got paid. She was required to keep a record of

every \$50 payment as well as itemize each payment on her campaign finance reports. The director said that she did not and, therefore, the Commission did not have sufficient cause to take Ms. St. James' word that these funds were used for campaign related purposes. The director also pointed out that Ms. St. James has repeatedly said that she does not "do paperwork" and that she did not handle any records. The director also mentioned that Ms. St. James had rented a campaign headquarters in Wilton, that testimony from Jessica Larlee suggested that the campaign HQ was in fact intended to be used as a flower shop, that the HQ was not in her district, and that the only campaign activity that might have went on was the storage of the campaign newsletters. The director said that the staff recommendation was for the Commission to require Ms. St. James to repay \$5,769.25 in public funds

Mr. Ginn Marvin expressed her opinion that when a candidate receives public funds, he/she is responsible for keeping detailed records, and that Ms. St. James should repay the public funds because she did not keep good enough records in this case. Mr. Cassidy said that the Commission had a responsibility to know where those funds went and agreed with Ms. Ginn Marvin. Mr. Ketterer also agreed, and said that having a candidate claim that they were not good at keeping records did not relieve a candidate from the responsibility of actually keeping those records. He also said that candidates using public funds need to keep detailed records because the public deserves to know where the money went and how it was spent. Mr. Ketterer said that he was disturbed by various purchases made by the campaign, including the rental of a campaign HQ that was outside the district and the purchase of herbs. Mr. Ketterer expressed his opinion that Ms. St. James' assertion that the cash was solely used for campaign related purposes lacked credibility, that he did not believe it was true, and that she should repay the public funds. Mr. Bigos said that he also did not accept the candidate's explanation, that she had not demonstrated that the cash was used for campaign purposes, and that she should be required to repay the \$5,769.25 in public funds.

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to find Ms. St. James in violation of 21-A M.R.S.A. §1125(6) for cash expenditures for which there are no receipts or other documentation and to require her to repay \$5,769.25 in public funds.

1-C – Payments to Dan Rogers

The director explained that there were two payments made to Dan Rogers. One, in the amount of \$3,000, was made on September 19, 2004. In the two previous hearings, the Commission heard conflicting testimony as to the purpose of this payment. Mr. Rogers claimed that it was part of compensation for a district wide mailing of 16,000 postcards, but the director said that not only has the candidate denied this mailing ever took place, but that Mr. Rogers has provided no proof that the mailing ever took place. In light of the lack of proof of the mailings despite repeated attempts by Commission staff to obtain such proof, as well as Ms. St. James' denial that any mailing took place, the Commission staff concluded that the mailing never happened. Ms. St. James said that the \$3,000 was intended for three newsletters, of which only one was ever produced, though the director pointed out that her testimony on this issue varied over time.

The director said there was also a \$2,000 payment made to Mr. Rogers on October 25, 2004. Mr. Rogers said that this payment was also for the 16,000 postcard mailing, and produced an invoice purportedly to that effect. Ms. St. James, however, had said that the payment was for automated phone calls that would go out to voters in her district, and had consistently expressed that opinion ever since the first interview she had with Commission staff. Ms. St. James said that the phone calls were supposed to be set up through someone in the Republican Party, and that she felt "ripped off" because the phone calls never happened. The staff recommendation was that the Commission find that the candidate had not demonstrated that either payment was made for campaign related purposes.

Mr. Bigos brought up the issue of how the Commission should consider a situation where the candidate's intent was that the payments were to be used for campaign purposes but the payee did not use them for those purposes or did not deliver. The director replied that with respect of Mr. Rogers, the staff was recommending a penalty of \$5,000, which matched the amount the staff was recommending Ms. St. James repay, and that the question of intent had no bearing on the recommended penalty. With regards to Ms. St. James, the director said that how much she should be required to repay could be influenced by the question of her good faith effort and intent for her payments to Mr. Rogers to be used for legitimate campaign related purposes. The

director said that he felt the additional recommended penalty of \$1,000 was fair given the amount of money spent on non-campaign related purposes. However, the director said that some of the staff felt that Ms. St. James should have asked for the money back once she realized that the payments were not being used for campaign related purposes.

Mr. Cassidy said that he thought it was strange the printers did not have a copy of the postcard mailing, to which Ms. Gardiner replied that Mr. Rogers stated he printed them himself. Mr. Ketterer said that with respect to Ms. St. James it was important take all of these issues line by line, and that he felt her intent needed to be considered with respect to the amount the Commission might require her to repay, and that he had problems with assigning sole blame to the candidate and not taking her intent into consideration. In response to an inquiry from Ms. Ginn Marvin on whether or not the Commission could require Mr. Rogers to repay public funds given to him by the candidate, Ms. Gardiner, said that the Commission could impose a penalty on Mr. Rogers but that under the language of the statute the Commission could not require Mr. Rogers to repay any misspent public funds.

Mr. Bigos said that he did not believe that Ms. St. James had demonstrated that the payment on September 19 was used for campaign related purposes, even though she had the intent for them to be used for campaign related purposes. Mr. Bigos also said that he felt the dates of the payments needed to be considered and that the Commission should take into account Ms. St. James's good faith effort when she made the September 19 payment. With regards to the October 25 payment, Mr. Bigos said that he did not think Ms. St. James had demonstrated that the payment was used for campaign related purposes, and that he questioned her good faith intent when she made that payment, because she should have been aware that campaign services were not being delivered as promised. Mr. Bigos felt that Ms. St. James needed to be held accountable for her decision to make a \$2,000 payment when there was a clear history of not receiving the services she had intended to get when she made the payment. He also said that the Commission should not require Ms. St. James to repay the \$3,000 payment, but that she should be required to repay some or all of the \$2,000 payment. Mr. Bigos said that Mr. Rogers should be assessed a penalty of at least \$5,000 for not performing those services for which he was contracted.

Mr. Ketterer announced that he was declining to offer his opinion on any penalties regarding Mr. Rogers, due to the fact that at an earlier meeting Mr. Ketterer had stated he would recuse himself from all decisions relating to Mr. Rogers. Mr. Ketterer agreed with Mr. Bigos with respect to the amount that Ms. St. James should repay. Mr. Cassidy said that he felt that Ms. St. James had used poor judgment from the very beginning, and that the Commission should not separate the two payments when considering the amount Ms. St. James should repay. Ms. Ginn Marvin questioned whether Ms. St. James ever expected her payments to Mr. Rogers were going to be used for campaign related purposes. Mr. Ketterer commented that the Commission should frame its decision on whether or not St. James made campaign related expenses and not focus on potentially bad judgment. Mr. Cassidy reiterated his point that he did not feel the Commission could separate the two payments made to Mr. Rogers with respects to the amount the Commission might ask Ms. St. James to repay. Mr. Bigos replied that he felt that Ms. St. James did not have enough experience at the time of the September 19 payment to Mr. Rogers to know how things would turn out, but that she was aware of his work history by the last few weeks of the campaign. He said that he was sensitive to the fact that any party or candidate should have a fair chance to express their views, but that when public funds were involved, the Commission had the right to attach certain strings and to place certain accountability on candidates for the way they use those public funds. Mr. Bigos said that he strongly felt that requiring Ms. St. James to repay public funds did not hinder other candidates or parties from participating in the election process.

Ms. Ginn Marvin said that she was comfortable with the staff recommendation of requiring Ms. St. James to repay the full \$5,000. Mr. Bigos said that he agreed with that as well. Mr. Ketterer stated that he would go along with requiring Ms. St. James to repay the \$2,000 payment. Ms. Ginn Marvin asked how the staff came to the \$1,000 additional penalty for Ms. St. James. The director replied that the staff recognized that there was a lack of accountability in the campaign, and that the \$1,000 penalty in combination with the recommended repayment of \$11,088.15 seemed appropriate. Mr. Bigos said that Mr. Rogers committed an egregious violation of the Maine Clean Election Act, that he did not find Mr. Rogers's explanation credible, and that he would support a penalty against Mr. Rogers for between \$5,000 and \$10,000. Ms. Ginn Marvin said that it was important to send a signal to everyone that if someone does not follow the rules,

the Commission will find out and fine that person to the best of the Commission's ability, and that she could be persuaded to assess the maximum penalty of \$10,000.

Mr. Bigos moved, Ms. Ginn Marvin seconded, and the Commission voted 3-1 (Mr. Ketterer dissenting) to find that Ms. St. James misused public funds and violated the MCEA Act, and to require her to repay the \$5,000 that she paid to Mr. Rogers. Mr. Bigos moved, Mr. Ketterer seconded, and the Commission voted unanimously to find Ms. St. James in violation of 21-A M.R.S.A. §1125(6) by spending Maine Clean Election Act funds for purposes that were not campaign-related, and to assess a \$1,000 penalty. Mr. Cassidy moved, Mr. Bigos seconded, and the Commission voted 3-0 (Mr. Ketterer abstained) to assess Mr. Rogers a \$10,000 penalty for violating 21-A M.R.S.A. §1125(6) by accepting Maine Clean Election Act funds and spending them for purposes that were not campaign-related. Mr. Cassidy stated that he had received the audio tapes from the last meeting and spent many hours reviewing the material so that he could be prepared to participate in this meeting.

## **II – False Invoices**

The director explained that the Commission requested from Ms. St. James any and all invoices that the campaign had, including invoices for payments made to Mr. Rogers. Ms. St. James requested in a letter to Mr. Rogers that he provide her with those invoices, and she stated that Mr. Rogers never gave her any invoices for the work he did for her campaign. Mr. Rogers said that he had prepared invoices for the 2004 campaign, that he had given them to Ms. St. James in either June or July in response to her letter (denied by Ms. St. James). At the November 9<sup>th</sup>, 2005 hearing, Mr. Rogers produced nine invoices. Of those invoices, the staff was concerned that three of those invoices contained material false statements. The invoices in question were #100087 (\$3,000), #100095 (\$2,000), and #100066 (\$872.51). The director explained that the #100087 and #100095 invoices were supposedly for the 16,000 postcards, which Ms. St. James said she never received and for which Mr. Rogers could not produce an original specimen. The director also noted that the dates on the invoices were the same dates as the reported expenditures on the campaign finance reports. The director said that with all the disorganization that had been documented in the campaign, it was hard to believe that Ms. St. James would have

turned around and paid Mr. Rogers on the same date that the invoice was given. The staff also had concerned over #100095 (\$2,000), for which Ms. St. James said was for automated phone calls. The check associated with that invoice had no notation in the memo portion, and the staff felt that, if the \$2,000 check was for postcards, Ms. St. James would have indicated that on the memo line on the check, as she had indicated the purpose of other checks on the memo lines in all but two other cases. The director said that with regards to invoice #100066, the math in the invoice did not appear to add up. In the invoice, Mr. Rogers claimed that the invoice was for 1,500 palm cards, which Ms. St. James was far more than the number she actually received. The director also pointed out that the unit price listed was \$.58, and that it seemed strange that the invoice would list the total price as being \$872.51 when 1,500 palm cards x .58 produces a total of \$870. The staff thought it was more likely that the invoice was fabricated in order to account for the reported \$872.51 payment. In addition, the director noted that the purported costs of the postcards (\$.32) and the palm cards (\$.58) were not credible given that there is an associated mailing cost of \$.23 per card for the postcards but not the pushcards, and the printing costs should have been about the same based on similar size and content as the cards. Taking all of these discrepancies into account, the staff concluded that these invoices contained material false statements and that Mr. Rogers made these false statements in response to a request by the Commission in order to justify public funds that he was paid. Due to the seriousness of these violations, the staff felt was recommending a penalty of \$2,500 for each false invoice, which added up to a total penalty of \$7,500 for this particular violation.

Ms. Ginn Marvin asked how the staff arrived at the \$2,500 penalty per invoice. The director replied that this penalty, which falls under 21-A M.R.S.A. §1004-A(5), could be up to \$5,000 per false statement. The director went on to say that it was important for the Commission to have the ability to conduct an investigation and receive truthful information from a witness about how public funds were spent, and that the false statements contained in the invoices represented a very serious violation. Mr. Cassidy said that the invoices seemed like originals and not copies. Mr. Bigos asked what Mr. Rogers testified to in relation to whether the invoices submitted were copies or originals. Ms. Gardiner replied that her recollection was that Mr. Rogers testified that the invoices he submitted to the Commission contained a little more detailed information than the ones he had given Ms. St. James. The director added that when Mr. Rogers arrived for the

November 9, 2005 meeting, Mr. Rogers submitted the invoices and said that he gave invoices to Ms. St. James for the campaign and that when she came to him for the invoices in June or July, Mr. Rogers had added more detail to them. He also said that the modified date on his computer would have been in June or July. Mr. Bigos said that he was very suspicious as to the authenticity of the invoices and that he felt each of the invoices were material false statements. Ms. Ginn Marvin said that given the facts surrounding the items on the invoices and the disorganization throughout the campaign, it was very clear to her that the invoices were made up and represented material false statements. Mr. Bigos said that he felt comfortable supporting the staff recommendation, but could be persuaded to support a higher penalty. He also said it was important to send a strong message that this kind of action will not be tolerated in the future, and that he hoped that proposals would be considered that would make it clear that consultants working with MCEA candidates would be held accountable for their actions. Mr. Cassidy agreed, and that accountability was very important when dealing with public funds, that he supported the staff recommendation, and that he hoped people would understand that this is a very serious issue. Ms. Ginn Marvin said that she felt the penalty should be higher, in part because Mr. Rogers had not been at all forthcoming in offering additional information to the Commission, that she felt his intention was to steal money from the people of the state of Maine, and that was not acceptable to her. Mr. Bigos said that while he did not disagree with Mr. Ginn Marvin, he felt that due to the level of proof that the invoices were material false statements, the staff recommendation was appropriate.

Mr. Bigos moved, Mr. Cassidy seconded, and the Commission voted (2-1 - Ms. Ginn Marvin dissenting, Mr. Ketterer abstaining) to fine Mr. Rogers for submitting material false information on the invoices in response to the Commission's investigation.

### **III – Failure to Report Accurate and Complete Information for all Expenditures**

The director explained that Ms. St. James was required to report the date, payee, amount, and purpose for every expenditure made by her campaign. Ms. St. James failed to do so for \$8,067.92 in public funds given to her campaign, and did not disclose to the public what that money was used for as required by law. The staff opinion was that three reports did not

substantially conform to the reporting requirements, that for the purposes of the penalties the staff was considering only two to be misreported (the third was an amendment to an earlier report) and that the staff recommendation was a penalty of \$2,500 per report, for a total penalty of \$5,000. The director specifically mentioned the October 29, 2004 cash withdrawal of \$4,500, which has never been fully explained in terms of exactly how that money was spent.

Ms. Ginn Marvin asked how this issue differed from Item I that the Commission had already covered. The director explained that Item I dealt with how the money was spent, while this Item dealt with reporting how the money was spent, and that they were two different responsibilities that Ms. St. James had. Mr. Ketterer asked about how other campaigns compared to this one in terms of reporting financial information. The director replied that the Ms. St. James campaign was egregious compared to most other campaigns with respects to the reporting requirement. He said that the Maine Clean Election Act requires that every dollar of public funds be accounted for, and that the St. James campaign committed serious reporting failures. Mr. Ketterer said that the legislative intent was to address both the public's right to know exactly how those public funds were spent, and that he did not see a problem with the two penalties involving the same expenditures. Mr. Bigos said that the reporting failures came just shy of submitting material false statements and that being non-specific in campaign reports was almost misleading. He also said that he was extremely distressed to learn that Mr. Rogers said that the Commission would not act on these issues in order to avoid receiving bad press, and that he would favor a penalty for each of the three reports in the amount of \$2,000 per report, for a total penalty of \$6,000. He also said that the reporting requirement was very important regardless of how Ms. St. James funded her campaign, and that if she was a traditional candidate his thoughts on the matter would not be any different. The director brought up the fact that one of the three reports was an amendment of an earlier report. Ms. Ginn Marvin reiterated her earlier opinion that when a candidate receives public funds, he/she is responsible for keeping detailed records.

Mr. Bigos moved, Mr. Ketterer seconded, and the Commission voted unanimously (4-0) to find Ms. St. James in violation of the reporting requirements and to assess a \$2,000 for each of the three reports, for a total penalty of \$6,000.

#### **IV – Failure to Keep Required Records**

The director explained that the statute requires candidates to keep records on contributions and expenditures, including receipts of all expenditures over \$50, for up to two years after an election. The staff opinion was that Ms. St. James did not conform to this requirement, and the staff recommendation was to assess a \$1,000 penalty for failing to keep required records. The director said that Jessica Larlee did originally sign up as treasurer, but that due to a falling out with Ms. St. James she was at some point no longer treasurer. Under the law, the responsibilities of the treasurer moved to Ms. St. James until she appointed a new treasurer, and she had a duty under the Election Law and Commission rules to keep required records.

Mr. Bigos asked if the relevant laws and rules applied to all candidates. The director replied that §1016 did, but that Chapter 3 of the rules applied to only MCEA candidates. Ms. Gardiner pointed out that §1016 referred to treasurers, while Chapter 3 referred to candidates.

Mr. Cassidy moved, Mr. Ketterer seconded, and the Commission voted unanimously (4-0) to find Ms. St. James in violation for failing to keep required records and to assess a penalty of \$1,000 for that violation. Mr. Bigos said that this instance of failing to keep required records was very egregious, that had Ms. St. James not been cooperative with the investigation, that this violation would warrant a \$10,000 penalty, and that Ms. St. James's statements regarding her inability to do paperwork were absolutely unacceptable.

#### **V – Failure to Liquidate Equipment and Property and Return Proceeds to the Fund**

The director explained that the campaign bought a lot of postage stamps, including a purchase of \$8,000 worth of stamps from the Auburn Post Office. After the campaign, Ms. St. James had around \$4,500 worth of stamps left over. The campaign also had electronic equipment left over, including printers, a fax/printers, a digital camera which was purportedly stolen, and a laptop. Under the Commission rules, any equipment bought by a MCEA candidate which could be converted to personal use must be sold at fair market value and the proceeds returned to the MCEA fund. Ms. St. James did not sell any of the postage stamps or equipment and return the

funds. The staff recommendation was to assess a penalty of \$5,000 for this violation. The director also said that while Ms. St. James had been cooperative with the investigation, it was not until the Commission requested the various items did Ms. St. James return the stamps and equipment. The Commission did get back the three printers and the laptop computer, which the director said was used for children's video games and other personal uses after the campaign.

Mr. Ketterer said that the purchase of a computer right before the election was suspicious, that other candidates worked hard to report their expenditures, and that he did not have a problem supporting the staff recommendation.

Mr. Cassidy moved, Mr. Ketterer seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and to assess Ms. St. James a \$5,000 penalty for failure to liquidate equipment and property and return the proceeds to the MCEA fund.

Due to a previous obligation, the Commission moved to the *Biddeford Special Election* item in order to allow Mr. Cassidy to participate.

### ***Biddeford Special Election***

#### **I – Violation of 21-A MRSA §1014(2)**

The director explained that in February or March in 2004, the Commission had received a complaint about a communication in a special election for House District #135 in Biddeford. This special election involved three candidates – a Democrat, a Republican, and a Green-Independent. The communication in question stated that the Democratic nominee had been involved in gay marriage, supported gay marriage, and included a picture of the nominee purportedly being married in Hawaii. At the time the complaint was filed, the Commission staff looked into to issue, but was unable to determine who had mailed the literature and referred the matter to the Attorney General's office for investigation. The director said that in the course of auditing Ms. St. James's campaign, Ms. St. James said that she knew of the literature and explained that Mr. Rogers had designed and sent out the literature. Mr. Rogers testified at the

November 9<sup>th</sup>, 2005 meeting that he was responsible for the creation and mailing of that literature, that around 100 were created, and that the total cost of the mailing was under \$50, which allowed him to not file an independent expenditure report.. Ms. Larlee testified under oath that Mr. Rogers had photocopied the pieces of literature at the Auburn Kinko's.

The director said that the Commission staff felt that this violated the attribution requirement in the Election Law , because the “paid for” statement, which on the literature said Coalition for Homosexual Marriage in Maine, should have said “paid for by Dan Rogers.” The reasoning behind this was that Mr. Rogers testified that the Coalition had not been involved in any other activity except for this literature. Also, there was no accurate address for the organization or about who financed the communication, and did not include the statement, “Not authorized by any candidate.” The staff felt that this was not an innocent mistake, and that there was intent to make the Coalition look like an authentic group, and that it was a serious violation regardless of the cost or amount sent out. The staff was recommending that Mr. Rogers be found in violation of the attribution requirements and to be penalized \$5,000 for this violation. The director said that there had been minor, accidental violations of this requirement in the past. The director said that since the statute says a penalty can be up to \$200 per single communication, and that at least 50 communications that went out, the staff determined that a per communication fine of \$100 and a total penalty of \$5,000 were reasonable. The director also said that the Commission staff had received a letter from an attorney, Dan Billings, who said that there was a single expenditure and a single communication, that it was less then \$50, that the Commission would be exceeding its authority if it assessed a penalty of greater then \$200, and that the legislative intent behind this law was to only allow a maximum penalty for this. The director said that while the staff's interpretation of the statute was possible, Mr. Billings's argument is reasonable. The director said that the proposed penalty reflected the serious nature of the violation and was not an attempt to encourage the Commission to exceed its authority.

Ms. Ginn Marvin said there was clearly a purposeful intent to deceive and mislead people with regards to this literature. Mr. Cassidy said that while he understood the intent, he did not think they could go beyond what the statute allowed. Mr. Bigos said that he agreed with Mr. Billings, that he wished the Commission had the authority to assess a larger penalty in this case, but that

the statute does limit the Commission's authority and that if the Commission assessed a penalty greater than \$200, it might be exceeding its authority.

Mr. Bigos moved, Mr. Cassidy seconded, and the Commission voted 3-0 (Mr. Ketterer abstaining) to find Mr. Rogers in violation of the attribution requirements and to assess a penalty of \$200.

### ***Trundy Campaign***

#### **I – Possible Use of MCEA Funds for Purposes Unrelated to the Campaign**

The director explained that a postcard that was supposedly mailed by Mr. Rogers and Ms. Larlee. Mr. Rogers had testified that there was a \$300 postcard mailing supporting marijuana legalization that went out, and that then there was a subsequent 2,300 piece postcard mailing that went to different groups. The director explained that the staff was not sure if the mailing took place, and that how the Commission decided on the mailing would determine the penalties on the following issues in the Trundy campaign. The director said that there were no examples of any postcards that were actually mailed, that a prototype had been submitted, that the staff had had requested that the campaign produce the final version of the postcards and that the campaign had never done so. When the director asked Ms. Larlee about this, she said that she was going to get statements from people who had received the postcards, but had never submitted any statements. The director also said that there was circumstantial evidence supporting the mailing of the postcards, including receipts for cardstock, expenditures for stamps in the amount of \$740, and testimonial evidence from Mr. Rogers and Ms. Larlee that the postcards went out. The director thought the Commission should decide on a factual basis as to whether the postcards went out, as that finding would influence the penalties assessed.

Mr. Bigos asked if candidates were required to keep copies of the literature that they sent out, and the director replied that it was not a requirement. Ms. Ginn Marvin said that she was certain the mailings never took place and that had the mailings took place someone would have a copy of what was sent. Mr. Ketterer said that there were clear differences between the St. James

campaign and the Trundy campaign, that Sarah Trundy did not take an active role in her own campaign, that Ms. Trundy never saw the postcards herself, and that he agreed that the mailings never took place. Mr. Bigos asked if the campaign ever produced a receipt for the postage. Paul Lavin, the assistant director, replied that there was no receipt ever submitted for the postage expense that was listed on the campaign finance report.

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (4-0) to find as fact that the postcard mailings never took place.

The director then asked if the Commission would want to require Ms. Trundy to repay the funds supposedly spent for the mailings, and also if the Commission would want to assess a penalty on Ms. Trundy or Ms. Larlee for making non-campaign related expenditures. The director said if the Commission wanted to have Ms. Trundy repay the public funds, the amount would be \$2,981.76. The director also asked the Commission about a \$1,000 payment made by the campaign to Mr. Rogers, and whether the Commission would consider part or all of that amount as being non-campaign related. Ms. Ginn Marvin expressed her opinion that Mr. Rogers likely never did anything for the campaign. Mr. Ketterer said that the person ultimately responsible for filing reports and keeping records is the candidate, and that Ms. Trundy needed to be responsible for her own campaign. Mr. Cassidy said that Ms. Trundy seemed very naïve and that he thought she was taken advantage of. Mr. Bigos said that Ms. Trundy needed to accept a large amount of responsibility for her campaign, but that Ms. Larlee's actions should be taken into account with regards to any penalties assessed. Mr. Ketterer added that he did not think that the fact that Ms. Trundy did not have check writing authority for her campaign allowed her to be exempt from reporting requirements and other campaign responsibilities.

Mr. Cassidy moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (4-0) to require Ms. Trundy to repay \$2,981.76 in MCEA funds that were not spent on campaign related purposes.

The director said that the staff recommended a penalty between \$5,000 and \$10,000 for misuse of public funds. Ms. Gardiner said that a fact to consider was that the Commission did not know

exactly what the \$2,981.76 was spent on. Mr. Cassidy said that the exact amount of funds misused did not change the seriousness of misusing public funds. Mr. Ketterer said that he felt that had Ms. Larlee not been involved, Ms. Trundy would have run for office and be in this position.

Mr. Ketterer moved to assess Ms. Larlee a penalty of \$5,000 for misuse of public funds. There was no second. Mr. Cassidy moved and Ms. Ginn Marvin seconded a motion to assess Ms. Larlee a \$10,000 penalty for misuse of public funds. Mr. Ketterer asked the reasoning behind the \$10,000 penalty. Mr. Cassidy said that they assessed Ms. St. James a \$10,000 penalty for the same type of offense, and that any amount of public funds misused is serious, regardless of how much the amount is. Ms. Ginn Marvin said that she felt this example was almost worse than the St. James one, because Ms. Trundy had no idea what was going on in her campaign, and that she felt what Ms. Larlee did was terrible. The Commission voted unanimously (4-0) to adopt the motion and assess a \$10,000 penalty for misuse of public funds.

**Additional Item – Referral of Material to the Attorney General**

The director recommended that all the materials relating to the St. James campaign, the Trundy campaign, and the literature on the special election in Biddeford be turned over to the Attorney General's office for potential criminal proceedings/investigations.

Mr. Bigos moved, Mr. Ketterer seconded, and the Commission voted unanimously (4-0) to refer the file and all materials pertaining to Ms. St. James, Ms. Trundy and Ms. Larlee to the Attorney General's office for possible criminal prosecution

Mr. Bigos moved, Mr. Cassidy seconded, and the Commission voted 3-0 (Mr. Ketterer abstaining) to refer the file and all materials pertaining to Mr. Rogers to the Attorney General's office for possible criminal prosecution.

At this point, Mr. Cassidy left the meeting due to a previous obligation.

**II – Failure to Keep Required Records**

and

**III – Failure to Accurately Report All Expenditures**

The director explained that Ms. Larlee, as treasurer for the Trundy campaign, was responsible for keeping a receipt for each expenditure over \$50. The staff reviewed the submitted receipts and records, which amounted to less than 10% of the overall spending of the campaign, and recommended a combined penalty of \$5,000 for failure to keep required records and also for failure to accurately report all expenditures. The director explained the reporting requirements for expenditures. There were expenditures totaling \$261 that were never reported, the campaign failed to note that they had purchased a printer on the campaign finance reports, and they did not have enough cash on hand to make some of the expenditures late in the campaign, at least according to their campaign finance reports.

Mr. Ketterer moved, Mr. Bigos seconded, and the Commission voted 3-0 to assess Ms. Larlee a combined penalty of \$5,000 for failure to keep required records and failure to accurately report all expenditures.

The staff also recommended a \$500 penalty for Ms. Trundy for failing to ensure that required records were kept and that the campaign reports were accurately filed. Mr. Ketterer said that he thought the staff recommendation was fair considering that the candidate is ultimately responsible and that there were other penalties and repayments.

Mr. Ketterer moved, Mr. Bigos seconded, and the Commission voted 3-0 to assess Ms. Trundy a \$500 penalty for failing to ensure that required records were kept and that the campaign reports were accurately filed.

**IV – Failure to Liquidate Equipment and Return Proceeds to the Fund**

The director explained that the computer printer, which was never reported but which purportedly broke towards the end of the campaign, should have been sold at fair market value and the proceeds returned to the MCEA fund. The staff recommendation was a \$500 penalty.

Mr. Bigos supported the staff recommendation, saying that the equipment should have been returned regardless if it had been broken or not and that not liquidating equipment bought with public funds was a serious offense.

Mr. Bigos moved, Mr. Ketterer seconded, and the Commission voted 3-0 to assess a \$500 penalty against Ms. Larlee for failure to liquidate equipment and return proceeds to the MCEA fund.

**Agenda Item #6 – Report on Maine Clean Election Act**

The director explained that the Commission was required to release a report on the MCEA Act, and asked if the Commission would want to see the document in draft form. The Commission agreed.

The Commission thanked the director, Ms. Gardiner and the rest of the Commission staff for their effort and hard work in completing the investigation.

There being no further business, the Commission adjourned.